

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

# STAFF REPORT

Hearing Date/Agenda Number  
P.C. 06-12-02 Item. 3.b.

File Number  
CP 01-03-025 & V 02-012

Application Type  
Conditional Use & Development Variance Permits

Council District  
7

Planning Area  
Central

Assessor's Parcel Number(s)  
494-01-017

## PROJECT DESCRIPTION

Completed by: Jeff Roche

Location: Easterly side of Capitol Expressway, approximately 700 feet southerly of the intersection of Capitol Expressway and Senter Road

Gross Acreage: 3.56

Net Acreage: 3.56

Net Density: N/A

Existing Zoning: A-Agriculture

Existing Use: Church, associated outbuildings, a classroom, and two residences and wireless communication antenna/monopole

Proposed Zoning: No change

Proposed Use: Continued use of an existing wireless communication antenna, collocation of new wireless communications antennas on an existing monopole, increasing the existing monopole from 50 feet in height to 60 feet, installation of ancillary equipment, and reduction of the required 300-foot setback to approximately 125 feet.

## GENERAL PLAN

Completed by: JR

Land Use/Transportation Diagram Designation  
Public/Quasi-Public

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

## SURROUNDING LAND USES AND ZONING

Completed by: JR

North: Commercial

CP - Commercial Pedestrian

East: High School

R-1-8 – Single-Family Residence

South: Attached Residential

A (PD) Planned Development

West: Detached Residential (across Capitol Expressway)

R-1-8 – Single-Family Residence

## ENVIRONMENTAL STATUS

Completed by: JR

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

## FILE HISTORY

Completed by: JR

Annexation Title: Tully No. 9-A

Date: 10/20/1970

## PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date: \_\_\_\_\_  
☐ \_\_\_\_\_

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### OWNER

Seven Trees Baptist Church  
Attn: Jerry Harris  
3195 Senter Road  
San Jose, CA 95111-1358

### APPLICANT

Sprint Spectrum  
Attn: Sandra Sarvis  
4457 Willow Road, Suite 202  
Pleasanton, CA 94588

### DEVELOPER

Verizon Wireless  
Attn: Mike Groff  
12677 Alcosta Boulevard  
San Ramon, CA 94583

Department of Public Works  
See attached memorandum

---

Other Departments and Agencies  
See attached memoranda from Fire and Police Departments

---

---

**GENERAL CORRESPONDENCE**

---

None received

---

---

---

**ANALYSIS AND RECOMMENDATIONS**

---

**BACKGROUND**

The developer, Sprint Spectrum, LP, on behalf of Verizon Wireless, is requesting a Conditional Use Permit and Development Variance Permit to allow an increase in the height of an existing monopole from 50 feet to 60 feet and the addition of three new wireless communication panel antennas. The project site is located at the easterly side of Capitol Expressway, approximately 700 feet southerly of the intersection of Capitol Expressway and Senter Road. The existing monopole was last approved by the Planning Commission under File Nos. CP 01-07-061 & V 01-11-034. The wireless communication facility was originally approved by the Planning Commission under a time-conditioned, Conditional Use Permit (File No. CP 96-06-052) and the associated Development Variance (File No. V 96-08-032). The applicant at that time failed to file a timely renewal, and the Conditional Use Permit expired on May 7, 2000.

The Zoning Ordinance requires a Conditional Use Permit (CUP) for wireless communication antennas located in the A-Agricultural Zoning District. The applicant has also requested a Development Variance for reduction of the required setbacks, and a Site Development Permit for the installation of improvements, including the ancillary ground equipment.

The project site is approximately 200 feet wide by 800 feet deep, with frontage on both Senter Road and Capitol Expressway. The site is currently occupied by a church, associated outbuildings, a classroom and two single-family residences at the easterly end of the property, and a monopole and associated equipment in an enclosure at the westerly side of the property. This proposal would add 10 feet to the top of the existing monopole and allow the construction of a new enclosure next to the existing one. There is not sufficient space in the existing enclosure to accommodate Verizon Wireless' equipment. The Development Variance is required to reduce the minimum setback along the southerly property line from 300 feet to approximately 125 feet.

Surrounding uses include commercial to the north, a high school to the east, attached residential to the south, and detached residential (across Capitol Expressway) to the west.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

## **Project Description**

The proposed project consists of an increase in the height of the existing monopole from 50 to 60 feet and the addition of (3) three, new eight-foot panel wireless communication antennas. These antennas as well as the existing Sprint antennas, will all be enclosed with a new radome, to improve the appearance of the top portion of the facility. Associated equipment will be housed in a new equipment shelter located on the ground adjacent to the southeast side of the existing building. The equipment will be enclosed with a new, 8-foot wall designed to match the existing walls and set back approximately 125 feet from the southerly property line. New landscaping, including both trees and shrubs will be added to the site to assist in screening the facility from the neighborhood and Capitol Expressway. The proposed facility is self-operating and unmanned, except for monthly maintenance operations. The applicant has indicated that this facility will allow better coverage and increased system access and quality to the growing number of cellular telephone users in the area.

## **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15303 which pertains to the new construction or conversion of small structures such as that which is proposed.

## **GENERAL PLAN CONFORMANCE**

The proposed use is consistent with the subject site's General Plan Land Use/Transportation Diagram designation of Public/ Quasi-Public. The Public/ Quasi-Public Land Use Designation has been determined to be an appropriate Land Use Designation for wireless communication antennas.

## **ANALYSIS**

The primary issues analyzed for the project include; 1) Conformance to the Zoning Ordinance and 2) Conformance to Council Policy 6-20, Land Use Policy for Wireless Communications Antennas.

### Conformance to the Zoning Ordinance Requirements

The Zoning Code specifies that the maximum height in the A-Agriculture Zoning District is 35 feet. A Variance approved in 1996 (File No. V 96-08-052) allowed this pole to extend to its current height of approximately 50 feet. A recent change to the Zoning Code allows the pole to extend to the proposed height of 60 feet without a Development Variance, provided that it includes a "slim" design.

Another new provision of the Zoning Code specifies that structures in the A-Agriculture Zoning District maintain a minimum 300 foot setback from all property lines adjacent to residential uses (the setback under the prior code was 50 feet). Attached residential uses are adjacent to the south of the site. The applicant has requested a Development Variance to allow a reduction in the minimum setback from 300 feet to approximately 125 feet.

The Zoning Ordinance provides criteria for issuance of development variances (Sections 20.100.1300 through 20.100.1330). A Development Variance can be granted because of special circumstances uniquely applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, where it is determined that the Development Variance will not result in undue impacts on surrounding properties or thwart the purposes of the Zoning District.

Unique circumstances relative to this property include the fact that it is 200 feet wide and that a 300-foot setback would entirely preclude development of the site. The proposed 125 feet between the equipment enclosure/monopole and the property lines of the nearby residences is more than adequate to ensure compatibility between these uses. The property lines of the subject property adjacent to Capitol Expressway and along the southerly boundary will be screened by both existing and new landscaping.

Based on the unique configuration of the subject property, the pre-existing setbacks established by the existing Sprint monopole, and the approximately 125-foot buffer provided by the project to the residential property line to the south, staff has concluded that the proposed Development Variance will not impair the utility or value of adjacent property or the general welfare of the neighborhood, and will not impair the integrity and character of the zoning district in which the subject property is situated.

#### Conformance with Council Policy 6-20

The proposed project conforms to key applicable elements of Council Policy (6-20) Wireless Communication Facilities. The Policy recommends that wireless communication antennas be located a minimum of 50 feet horizontally from any property with a residential use or General Plan designation. The portion of the site that proposed to be used for wireless communication uses is approximately 125 feet from the residential property line to the south. As noted elsewhere in this report, the site has a General Plan Land Use/Transportation Diagram Designation of Public/Quasi-Public and an A-Agricultural Zoning Designation. The primary use of this property is as a church, and the two residences that are on the property are incidental to this church use. In addition, there is approximately 80 feet of separation between the proposed project and the nearest on-site residence to the east. For these reasons, staff has concluded that the proposed project meets the intent of the Policy with regards to the residences on the property.

The Council Policy requires that service providers explore alternatives to new monopoles. In this case an alternatives analysis was prepared for this project because the proposed collocation required an extension to the height of the existing monopole (see attached). As noted in that study, numerous sites were analyzed but deleted from consideration due to such problems as increased visual impacts or technical difficulties in achieving adequate coverage. The Policy requires ancillary equipment to be screened. The proposed antennas and equipment cabinet are set well back from the public right-of-way. Substantial new landscaping (including both trees and shrubs) and the construction of new, 8-foot masonry enclosure walls will also serve as adequate screening from off and on the site. In addition, the proposed equipment shelter does not eliminate required parking for the church. Based on this analysis and the slim pole design, and additional landscaping proposed by the applicant, staff has concluded that the increased pole height is an acceptable solution.

#### **Conclusion**

Based on this analysis, staff concludes that the proposed project conforms to Council Policy 6-20, is in conformance with the Zoning Ordinance and is compatible with the surrounding neighborhood.

#### **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use and Development Variance Permits and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A-Agricultural Zoning District. The maximum height for structures in the A-Agricultural Zoning District is 35 feet. The Zoning Code states that the maximum height of a wireless communication antenna may be increased over the required maximum height of the Zoning District in which it is located up to a maximum of sixty (60) feet provided that the design of the antenna is a “slim” pole design. The applicant’s proposal includes a slim pole design.
3. The City Council has adopted a Policy (6-20), entitled “Land Use Policy for Wireless Communication Facilities”. It also provides criteria for siting wireless communication antennas to address potential visual impacts, allowable height, and setbacks from residential uses.
4. The project site is developed with a church, associated outbuildings, a classroom, two residences and an existing approximately 50-foot tall monopole and associated equipment. The project site is 3.56 acres in size.
5. The 3.56-acre project site is located between Senter Road and Capitol Expressway approximately 500 feet northerly of Carpentier Way. The easterly side of the subject site is currently developed with a church. The proposed project is located in the westerly portion of the site. Surrounding land uses include commercial uses to the north; a high school to the east across Senter Road; Capitol Expressway and single-family detached residences to the west and attached residential to the south.
6. The developer is requesting a Conditional Use Permit and a Development Variance to allow continued use of an existing wireless communications monopole antennae and associated equipment, to allow an increase in the height to the existing monopole from 50 feet to 60 feet and the addition of three new wireless communication panel antennas and new associated equipment on an existing church site in the A-Agriculture Zoning District. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennae in the A-Agriculture Zoning District.
7. A Development Variance is also on file (File No. V02-012) to allow a reduced setback from the 300-foot minimum setback required by the A-Agriculture Zoning District.
8. The strict application of the requirements and regulations prescribed in Section 20.20.200 of this title would require that the proposed wireless communication structure be setback a minimum of 300-feet from the adjacent residential property line. The parcel is only 200 feet in width. The required 300-foot setback would render this property undevelopable.
9. The applicant is proposing to vary the strict application of Section 20.20.200 to the project site in the following respects: Provide a reduction in the required minimum setback from 300-feet to approximately 125 feet.
10. The existing antenna is approximately 50 feet in height. The project developer is proposing to add 10 feet to the existing monopole and enclose both their antennas and the existing Sprint antennas with a new radome structure. The proposed project would result in a pole that is a maximum of 60 feet in height. The proposed project would allow the collocation of a new antenna on an existing wireless communication facility, and the addition of associated equipment on the ground

11. The proposed antennas and associated equipment are approximately 125 feet from the nearest residential property line. The existing residences are set back approximately 15 to 20 feet from the southerly property line, for a total separation of from 140 to 145 feet from the proposed facility. The ancillary ground equipment will be placed in a new masonry enclosure that matches the existing Sprint enclosure. The proposed project adequately screens ancillary equipment cabinets from view. The proposed project will not eliminate required parking.
12. The developer will be adding new landscaping (including trees and shrubs) to help screen the subject antennas from off-site.
13. The proposed Permit would also allow a required 300-foot setback to be reduced to approximately 125 feet.
14. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with the applicable criteria of City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.
5. Because of special circumstances uniquely applicable to the subject property, including, but not limited to, size, shape, topography, location or surroundings, but expressly excluding any consideration of the personal circumstances of the petitioner or of any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situate at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in this Title and referred to in Sections 20.100.1300 through 20.100.1330, deprives such property of privileges enjoyed by other property in the vicinity of and in same zoning district as the subject property, in that: the property is only 200 feet wide and a 300-foot setback would preclude development of the parcel. The Variance, subject to such conditions as may be imposed thereon, will not impair the utility or value of adjacent property or the general welfare of the neighborhood, and will not impair the integrity and character of the zoning district in which the subject property is situate in that: the proposed location of an equipment enclosure is located approximately 125 feet from the property lines of the nearby residences and is adequately screened by both existing and new landscaping from the Capitol Expressway and the residential property line to the south.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit and Development Variance Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use and Development Variance Permits shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Capitol & Senter CA-1896-0100" dated August 15, 2001, last revised on January 9, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Previous Permits.** This Permit supercedes the prior Conditional Use Permit (File No. CP 01-07-061).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
6. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set. The project developer shall paint the new portion of the monopole to match the existing pole.
7. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-15275) to the satisfaction of the Director of Public Works:
  - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
  - b. *Utility Undergrounding Fee.* The developer shall pay a fee of 10 percent of the amount identified in the City's adopted fee Ordinance for the portion of the site adjacent to Senter Road to be used in accordance with Section 15.26 of the San Jose Municipal Code prior to issuance of a public Works clearance
8. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* These Permit File Numbers, CP 01-03-025 & V 02-012 shall be printed on all construction plans submitted to the Building Division.
8. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as required. The exact location shall be specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
9. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
10. **Fire Flow.** Required fire flow for the site is as approved in writing by the Fire Chief.



11. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
12. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
13. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
14. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
15. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.
16. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennae on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennae on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the monopoly is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

**PLEASE NOTE THAT THIS CONDITIONAL USE PERMIT HAS BEEN GRANTED FOR A PERIOD OF FIVE YEAR(S) ONLY. YOU ARE BEING SPECIFICALLY AND SEPARATELY ADVISED OF THIS TIME LIMITATION SO THAT YOU WILL CONSIDER THIS TIME LIMITATION IN YOUR DECISION TO ACCEPT THIS PERMIT OR AS YOU MAKE ANY INVESTMENT DECISION RELATED TO THIS PROPERTY.**

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
- C: Laura Spano, General Dynamics, 4000 Executive Parkway, Suite 515, San Ramon, CA 94583  
Eric Uhrenholt, Diamond Services, 200 Gregory Lane, Suite 210-A, Pleasant Hill, CA 94523  
Matt Runte, Diamond Services, 200 Gregory Lane, Suite 210-A, Pleasant Hill, CA 94523